

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1615 of 2015

- Smt. Pyaari Bai W/o Late Dhaneshwar Yadav, Aged About 25 Years R/o Village Birejhar, Post Hirri, P. S. Bori, Tehsil And District Durg Chhattisgarh.

---- Appellant/claimant

Versus

1. Jeevan Lal Yadav S/o Late Shyamlal Yadav, Aged About 55 Years R/o Village Birejhar, Post Hirri, P. S. Bori, Tehsil And District Durg Chhattisgarh.
2. The United India Insurance Company Ltd., Through Its Branch Manager, Branch Office, Opposite Paras Complex, S B I Branch, Station Road, Tehsil And District Durg Chhattisgarh.

---- Respondents

For Appellant	:	Shri Sunil Pillai, Advocate.
For Respondent No.1	:	None.
For Respondent No.2	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07/02/2019

This appeal is by the claimant under Section 30 of the Employees' Compensation Act, 1923 (in short "the Act") against the judgment dated 6.11.2015 passed by Commissioner, Employees' Compensation Act, Labour Court, Durg (CG) in Case No.10/WC Act/2014 Fatal, whereby the claim petition filed under Section 10 of the Act has been dismissed.

02. As per averments in the claim petition, deceased Dhaneshwar Yadav, husband of the claimant, was under the employment of non-applicant No.1 Jeevanlal Yadav as a driver of his tractor bearing No. CG 07 ZG 0161. On the date of accident i.e. 4.4.2013 while

Dhaneshwar Yadav was thrashing the grams by driving the said tractor, the scarf (*gamchha*) worn by the deceased got stuck in the thrasher leading to his death. At the time of accident, the said vehicle was duly insured with non-applicant No.2/United India Insurance Co. Ltd. At the relevant time, the deceased was 28 years of age and was earning Rs.9000/- per month as a driver.

03. On claim petition being filed by the claimant, wife of the deceased, the Commissioner dismissed the claim petition solely on the ground that there is no relationship of employee and employer between the deceased and non-applicant No.1 as the deceased was son of non-applicant No.1. The Commissioner has also recorded a finding that income of the deceased has not been established because according to the claimant, the deceased was earning Rs.6000/- per month whereas non-applicant No.1 states that he was paying to the deceased Rs.5000/- per month plus Rs.50/- per day towards allowance.

04. Learned counsel for the appellant/claimant submits that the Commissioner was not justified in dismissing the claim petition merely on the ground that the deceased being son of non-applicant No.1 cannot be considered to be his employee whereas the evidence on record of the claimant, non-applicant No.1 as well as of independent witness AW-2 Ashok Sivare, clearly goes to show that the deceased was under the employment of non-applicant No.1. Further, as per decision of the Karnataka High Court in ***Divisional Manager, National Insurance Co. Ltd. Vs. Pramila Bai and others in MFA No.31321/2010 (WC) dated 2nd March, 2016***, there is no prohibition in law for the blood relatives to be the employer and employee.

As regards quantum of compensation, he submits that though the claimant has pleaded income of the deceased to be Rs.9000/-, however, even as per statement of non-applicant No.1, the same may be taken as Rs.5000/- plus Rs.50 per day towards allowance, which comes to Rs.6500/- per month. Age of the deceased as 28 years has rightly been assessed by the Commissioner, therefore, the applicable multiplier would be 211.79 as per Schedule IV under Section 4 of the Act. He prays for computation of the compensation accordingly with

interest @ 12% from the date of claim petition as well as imposition of penalty.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned judgment and submits that the Commissioner was fully justified in dismissing the claim petition on account of failure of the claimant to establish relationship of employee and employer between the deceased and non-applicant No.1 as the deceased was son of non-applicant No.1. In support of her contention, she places reliance on the decision of the Hon'ble Apex Court in ***New India Assurance Co. Ltd. Vs. Sadanand Mukhi and others, 2009 ACJ 998 (SC)***.

06. Heard learned counsel for the parties and perused the material available on record.

07. This appeal was admitted for hearing vide order dated 5.5.2016 on the following sole substantial question of law:

“Whether the Commissioner was justified in dismissing the claim on the ground that the deceased could not be said to be in the employment of respondent No.1?

08. In her claim petition, the claimant has stated that her husband-deceased was under the employment of non-applicant No.1 as a driver for driving his vehicle tractor bearing No.CG 07 ZG 0161. In her statement on oath she has also stated the same fact and further stated that the deceased was being paid by non-applicant No.1 Rs.6000/- per month plus Rs.100/- per day towards allowance i.e. Rs.9000/- in total per month. Non-applicant No.1 Jeevanlal Yadav (NAW-1) has also supported the evidence of the claimant by stating that the deceased was under his employment as a driver. However, he states that he was paying Rs.5000/- per month plus Rs.50 per day towards allowance i.e. Rs.6500/- in total per month. Thus, both of them have admitted employment of the deceased under non-applicant No.1. Merely on account of there being some difference in the statements of above witnesses as to amount being paid to the deceased towards salary,

their whole testimony cannot be discarded and the fact remains that both of them do not dispute employment of the deceased under non-applicant No.1 as a driver.

09. This apart, Ashok Sivare (NAW-2), an independent witness, has also stated that the deceased was working as driver in the vehicle in question owned by non-applicant No.1 and that after marriage the deceased along with his wife was living separately from his father. This statement has not been challenged in the cross-examination.

10. From the above, it stands established that on the date of accident the deceased was under the employment of non-applicant No.1 as a driver. Even otherwise, the insurance company also does not dispute the said fact. In fact, its contention is that there can be no relationship of employee and employer between the deceased and non-applicant No.1 and being so, the insurance company cannot be saddled with the liability of indemnifying non-applicant No.1 for the death of the deceased.

11. While dealing with the identical issue of relationship of employee and employer between the son and the father in the matter of ***Divisional Manager Vs. Pramila Bai*** (supra), the Karnataka High Court referring to various earlier judicial pronouncements in ***Manohar Bhimappa More Vs. Mahadev Bhimappa More, 2005(5) AIR Kar. 36; Oriental Insurance Co. Ltd. Vs. Hanumant and another, 2005(4) KCCR 2320; New India Assurance Co. Ltd. Vs. Smt. Mahananda and others, 2009 Kant. MAC 476 (Kant); and Oriental Insurance Co. Ltd. Vs. Shri Ramesh and another, 2014(4) KCCR 3411***, observed as under:

“7. It is an admitted fact that one Sri Rajkumar s/o Mohanrao Kulkarni met with an accident on 22.04.2008 while working as a cleaner in a lorry bearing No.KA-38/78 while proceeding in the said lorry in the course of employment from Bidar to Manna-E-Khelli. The only dispute now raised by the appellant is that there is no relationship of employer and employee between the father and son and

no material evidence is placed by the claimants to prove the contractual relationship. This issue is no more res integra. This Hon'ble Court in various Judgments cited supra has considered the identical issue of the father and son working as employer and employee and the son in the course of employment sustained injuries in the accident/died and the compensation claimed by the claimants under the provisions of the Act. This Court in the case of Mahananda (supra) has categorically held that the issue of employer and employee relationship is pure question of fact and it cannot be raised as a question of law much less substantial question of law in the wake of some evidence given by the employer. Just because, the employer/owner of the tractor/vehicle has employed his son as a coolie or a workman, it would be erroneous to hold that there cannot be an employer and employee relationship. There is no prohibition in law for the blood relatives to be the employer and employee."

"10. Further, it would be beneficial to refer to the Judgment of this Court in the case of Manohar Bhimappa More (supra) wherein this Court has held thus:

3. On thorough consideration of the facts, the view taken by the W.C. Commissioner is bad in law. After all the tractor-trailer is meant to be used for agricultural purpose and it requires employment of people. In the rural life styles, it is not uncommon to find the practice of oral appointment for specific purpose and time. Many a time, the persons in the family would be employed for going the work instead of employing the strangers. The fact that the injured is the brother and guarantor for repayment of the loan is not a valid reason to hold that he was not a workman employed in connection with the tractor - trailer. The member of the family so employed cannot be considered as a workman in law only when he is the registered owner of the vehicle. Hence there is no inhibition in law for employment of member of the family in connection with the tractor trailer. In view of the peculiar family relationship it is artificial to insist documentary proof of appointment and payment of wages by cash as the only mode of consideration for proof of employment.

11. The very argument now advanced by the learned counsel appearing for the appellant was addressed in the case of G.D.Dengi (supra) placing reliance on the Judgment of Gottukukkala Appala Narasimha Raju(supra). Considering the said judgment, this Court has held:

5. xxxx xxxx xxxx

8. ... He has relied on the decision of this Court in [Oriental Insurance Co. Ltd. V. Hanumant](#), 2006 ACJ 251 (Kant), wherein it is held thus:

"2) ... It is not uncommon amongst the business family to engage their own kith and kin on employment for doing the business or commercial activity. Merely because in such a situation no wages are paid in cash is also not a ground to infer absence of a legal relationship of employer and employee, since there would always be consideration in kind computable in terms of money for the services rendered. The parties would not go for documentation of the contract nor create any documentary material to prove payment of wages in view of the peculiar family relationship..."

12. So far as judgment in the matter of *Sadanand Mukhi* (supra) relied upon by learned counsel for the insurance company is concerned, the same is not applicable to the facts of the present case as it relates Motor Vehicles Act, 1988 wherein the deceased, son of the insured, while driving the vehicle-motorcycle of the insured died and as such, was not treated third party for having entered into the shoes of the owner/insured.

13. Thus, considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the parties, the judgment of the Karnataka High Court in *Divisional Manager Vs. Pramilabai* (supra), this Court is of the opinion that the Commissioner was not justified in recording a finding that the deceased was not under the employment of non-applicant No.1 on the date of accident.

14. As regards quantum of compensation, the Commissioner has assessed the age of the deceased as 28 years on the basis of

documents of Ex.P/3 i.e. application for postmortem and the postmortem report, which appears to be just and proper. In relation to income of the deceased, the claimant has pleaded that income of the deceased to be Rs.9000/- whereas non-applicant No.1 states that he was paying Rs.5,000/- per month plus Rs.50/- per day towards allowances to the deceased. Therefore, looking to the overall facts and circumstances of the case, the contrary evidence on the issue of income of the deceased, keeping in view the minimum wages at the relevant time of skilled labour, it would be justifiable to take the income of the deceased as Rs.6,500/- per month. Therefore, in view of age of the deceased, the applicable multiplier would be 211.79 as per Schedule IV under Section 4 of the Act. Accordingly, total compensation comes to $\text{Rs.}3,250 \times 211.79 = 6,88,317.5$, which is rounded off to Rs.6,88,317/-. In the given facts and circumstances of the case, the aforesaid amount shall carry simple interest @ 12% per annum from the date of claim petition till deposit of the same. However, there shall be no order in respect of penalty.

15. It is not in dispute that as per Ex.D/2C, the offending vehicle was duly insured with non-applicant No.2 at the relevant time and there is no breach of policy conditions on the part of non-applicant No.1/employer, therefore, non-applicant No.2/insurance company shall indemnify non-applicant No.1/employer by paying the amount of compensation including the interest thereon to the claimant within a period of one month from today.

16. In the result, the substantial question of law framed by this Court is answered in the negative and the deceased is held to be under the employment of respondent No.1 on the date of accident. Consequently, the impugned judgment is hereby set aside and the appeal is allowed in part to the extent that the claimant shall be entitled to compensation of Rs.6,88,317/- with simple interest @ 12% per annum from the date of claim petition i.e. 31.1.2014 till deposit of the same. The liability of paying the aforesaid amount within one month from today, shall be of non-applicant No.2/insurance company. However, in the facts and

circumstances of the case, there shall be no order in respect of penalty.

Sd/

(Gautam Chourdiya)

Judge

Khan